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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/105/B/14-RA / 3416

Date of Issue 28.07.2020

ORDER NO. 39 /2020-CUS (SZ)/ASRA/MUMBAI DATED 28.07.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Hassainar Kombanaukkam Ismail

Respondent : Commissioner of Customs, Bangalore

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 195/2016 dated 15.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Hassainar Kombanaukkam Ismail (herein referred to as Applicant) against the order No. 195/2016 dated 15.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

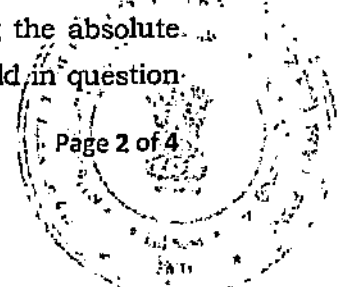
2. The Officers of Customs intercepted the Applicant as the baggage scan was marked by the main Scan officer at the Mangalore International Airport, on 22.02.2014 on suspicion as his checked in baggage showed some unusual images during scanning. The baggage scrutiny, however did not reveal any dutiable goods. However a personal search revealed that some hard objects were concealed in the elastic portion of his underwear. On cutting open the elastic six gold metallic sheets collectively weighing 233.260 grams totally valued at Rs. 7,23,106/- (Rupees Seven Lakhs Twenty three thousand One hundred and six).

3. The Original Adjudicating Authority vide its Order-In-Original No. 40/2014 ADC dated 07.08.2014 the ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 1,25,000/- (Rupees One lac twenty five thousand) under Section 112 (a) and (b) of the Customs Act,1962. A penalty of Rs. 75,000/- (Rupees Seventy five thousand) was also imposed under section 114AA of the Customs Act,1962.

4. Aggrieved by this order the applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. 195/2016 dated 15.03.2016 rejected the appeal of the Applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application inter alia on the grounds that;

5.1 The original authority had ordered for the absolute confiscation of the gold seized from the appellant's possession after holding that the same fell within the ambit of 'prohibited goods' as the applicant had attempted to import the gold in contravention of the conditions laid down under Notification No 12/2012-Cus dated 17-03-2012.; In the present case the applicant had not claimed benefit of Notification No 12/2012-Cus and he was liable to pay duty as applicable to a passenger under Customs Baggage Rules. When the benefit of a notification was not claimed in the first place, violation of a condition thereof would not render the goods 'prohibited goods'; the import of gold is not barred otherwise by any law in the country. Hence to hold the goods as 'prohibited' and ordering the absolute confiscation thereof is totally untenable. In the present case the gold in question



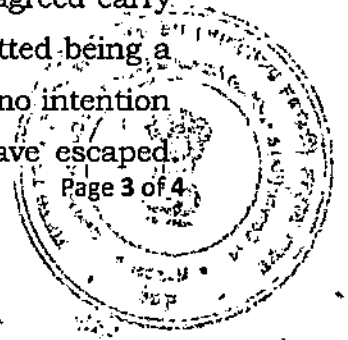
has been admittedly seized from the possession of the appellant. It is a settled legal position that ownership of the goods lies with the person from whose possession such goods are seized. As per the relevant regulations the natural course for the original authority was to have permitted the release of the gold pieces on payment of import duty leviable thereon and reasonable redemption fine in lieu of the confiscation.; the applicant was not attempting to go through the green channel but was intercepted even before he could enquire about the customs formalities. Thus, there being no attempt to smuggle the goods, the absolute confiscation could not be ordered. Reliance in this regard is placed on the decision of CESTAT rendered in the case of Yakub Ibrahim Yusuf Versus Commissioner of Customs, Mumbai [2011 (263) E.L.T 685 (Tri-Mumbai)] and the view was taken by the Hon'ble High Court of Madras in the case of T Elaurasan Versus Commissioner of Customs [2011 (266) E.L.T 167 (Mad).; It is submitted that the regime of gold import has seen liberalization over the last few years and therefore every case of gold import, notwithstanding violation of baggage provisions, cannot be viewed as 'smuggling'. It is in this background the impugned order holding the goods liable for absolute confiscation does not pass the test of law and liable to be set aside; the applicant was not attempting to go through the green channel but was intercepted even before he could enquire about the customs formalities.

5.2 The Revision Applicants prayed for release of the gold after deducting penalties as imposable in the facts and circumstances of the case.

6. A personal hearing in the case were scheduled on 07.11.2019. Shri Pradyumna G. H. appeared on behalf of the Applicant and reiterated the grounds mentioned in the revision application. No one appeared on behalf of the Respondents.

FINDINGS AND ORDER

7. The Government has gone through the facts of the case, The gold was not declared as required under section 77 of the Customs Act,1962. The gold was recovered only after he was subjected to a personal search, the gold sheets were specially stitched into the elastic of his underwear, and the elastic was cut open to reveal the hidden gold and therefore the allegation of ingenious concealment is proved. In his voluntary statement recorded by the Customs officers on the day of the seizure the applicant has admitted that he was enticed into carrying the gold by a person named Niyas from Abu Dhabi, and the applicant agreed carry the gold for a consideration of Rs. 10,000/-. He therefore has admitted being a smuggler in his voluntary statement. It is clear that the Applicant had no intention of declaring the gold if he was not intercepted the gold would have escaped.



payment of customs duty. The Government therefore is not inclined to accede to the Applicant's request for release of the gold on redemption fine and penalty. The impugned gold is therefore liable for absolute confiscation.

8. In view of the above facts, the Government is of the opinion that the adjudicating and the Appellate authority has rightly confiscated the gold absolutely. Government therefore holds that there is no need for interference in so far as the absolute confiscation and imposition of penalty under section 112 (a). However once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 75,000/- (Rupees Seventy five thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

9. So ordered.

(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 39/2019-CUS (WZ) /ASRA/MUMBAI DATED 05/05/2020

To,

Shri Hassainar Kombanaukkam Ismail, 2/3, (VII/34, Kombanaukkam House, PO Chemna, Kasargod, Kerala.

Copy to:

1. The Commissioner of Customs, Kempegowda International Airport, Bangalore.
2. Shri Pradyamma G. H. Advocate, BVC & Co. No. 371, 1st Floor, 8th Main, Sadashiv Nagar, Bangalore - 560080.
- 2 Sr. P.S. to AS (RA), Mumbai.
- 3 Guard File. ,
- 4 Spare Copy

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

